IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

WP(C).No. 10478 of 2007(V)

PETITIONER:

S.UNNIKRISHNAN,FOREST RANGE OFFICER,
SOCIAL FORESTRY,KATTAPPANA,IDUKKI.

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR
SRI.BINDU SREEKUMAR
SRI.K.G.RENGANATH

RESPONDENTS:

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1. STATE OF KERALA REP.BY THE SECRETARY,
TO GOVERNMENT,FOREST & WILDLIFE DEPARTMENT.
SECRETARIAT,THIRUVANANTHAPURAM.

2. THE CHIEF CONSERVATOR OF FOREST
(ADMINISTRATIVE),FOREST HEADQUARTERS,
THIRUVANANTHAPURAM.

BY GOVT. PLEADER SRI.BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.10478 OF 2007

Dated this the 4th day of April, 2007

JUDGMENT

The petitioner is a Range Officer who took charge in Kollengode on 14.6.2002. Some time in February, 2002, there was a theft from the forest strong room at Olavakkode. On 16.1.2006, Ext.P5 memo of charges was issued against the petitioner on the ground that the failed to conduct physical verification of the valuables kept in the strong room in terms of the provisions of the Kerala Forest Code, after he took charge at Kollengode. Though the date mentioned in Ext.P5 is 14.6.2000, it is only an error. He took charge, admittedly, only on 14.6.2002. The petitioner is also accused of having not inspected the strong room even after the locks were removed from the forest offices in the complex. It is also alleged that he did not discuss the matter with the other relevant officers.

2. Ext.P6 is the reply given by the petitioner to the memo of charges, in which, he virtually admits of not having verified the

strong room immediately upon taking charge. Ext.P6 contains his explanation for delay in conducting the physical verification of the strong room.

3. Therefore, it need not have to be established in any inquiry that the petitioner did not conduct actual physical verification of the strong room to ascertain the status of the valuables therein, immediately after he took charge on 14.6.2002. All that may require for a prudent disciplinary officer is only to advert to and consider his defence and explanation as regards the reasons offered by him for the non inspection in time.

4. The petitioner is under suspension for more than three years. Ext.P7 is a letter written by the Chief Conservator of Forests on 8.6.2006, essentially reflecting the hollowness of the charges against the petitioner. The CBI investigating into the issue had also concluded that the petitioner cannot be an accused and that any disciplinary proceedings against him may be competed.

5. The petitioner repeatedly came to this Court and on the teeth of contempt proceedings, Ext.P3 was issued by the Secretary to Government expressing the decision of the Government to continue with the disciplinary proceedings.

6. As of now, the request of the petitioner is only for an early completion of the disciplinary proceedings. He urges that he was repeatedly gone out of the zone of consideration for further promotion on account of the disciplinary proceedings.

7. Learned Government Pleader submits on instructions that four months more are required to finalise the proceedings.

8. Having regard to what I have said above, regarding the quality of the disciplinary proceedings, and the nature of the defence set up by the petitioner to the memo of charges, one fails to understand why the disciplinary authority require four months to complete the proceedings in hand.

9. That apart, going by the scheme of the service rules which govern the petitioner, as are contained in the KS & SSR and the Civil Services (Classification, Control & Appeal) Rules, there was no reason to exclude the petitioner from the zone of consideration for promotion because in such cases, sealed cover procedure ought to have been adopted. It is repeatedly noticed by this Court in different situations that personnel are excluded from the zone of consideration merely on account of existing disciplinary proceedings. That is not the policy of the service rules. A person who is entitled to be considered ought to be considered under sealed cover procedure, in such circumstances, and even if found entitled to be promoted, action in his favour may stand deferred till completion of proceedings or the question of promotion would be considered after the completion of proceedings. This does not mean that his case should not be considered along with others by the DPC.

10. Having regard to what is aforesaid, this writ petition is disposed of directing that:

(i) the disciplinary proceedings against the petitioner commenced with the issuance of Ext.P6 memo of charges shall be completed within an outer limit of three months, without fail. The aforesaid time fixed for completion of disciplinary proceedings shall be treated as peremptory, having regard to the earlier judgment inter partis.

(ii) Pending such consideration, if the DPC meets to consider the case for promotion to the higher cadre and the petitioner, going by the requisite provisions under the seniority list and the rules, is entitled to be considered, his case shall also be considered applying sealed cover procedure and appropriate action shall follow in accordance with law.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.